

EXHIBIT 5

By: Hughes

S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

1
2 relating to restricting certain sexually oriented performances on
3 public property, on the premises of a commercial enterprise, or in
4 the presence of a child; authorizing a civil penalty; creating a
5 criminal offense.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subtitle A, Title 9, Health and Safety Code, is
8 amended by adding Chapter 769 to read as follows:

9 CHAPTER 769. SEXUALLY ORIENTED PERFORMANCES

10 Sec. 769.001. DEFINITIONS. In this chapter:

11 (1) "Premises" has the meaning assigned by Section
12 46.03, Penal Code.

13 (2) "Sexually oriented performance" has the meaning
14 assigned by Section 43.28, Penal Code.

15 Sec. 769.002. CERTAIN SEXUALLY ORIENTED PERFORMANCES
16 PROHIBITED ON PREMISES OF COMMERCIAL ENTERPRISE; CIVIL PENALTY;
17 INJUNCTION. (a) A person who controls the premises of a commercial
18 enterprise may not allow a sexually oriented performance to be
19 presented on the premises in the presence of an individual younger
20 than 18 years of age.

21 (b) A person who violates this section is liable to this
22 state for a civil penalty of not more than \$10,000 for each
23 violation.

24 (c) The attorney general may bring an action to:

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1 (1) recover the civil penalty imposed under this
2 section; or

3 (2) obtain a temporary or permanent injunction to
4 restrain the violation.

5 (d) An action under this section may be brought in a
6 district court in:

7 (1) Travis County; or

8 (2) a county in which any part of the violation occurs.

9 (e) The attorney general shall deposit a civil penalty
10 collected under this section in the state treasury to the credit of
11 the general revenue fund.

12 (f) The attorney general may recover reasonable expenses
13 incurred in bringing an action under this section, including court
14 costs, attorney's fees, investigative costs, witness fees, and
15 deposition expenses.

16 SECTION 2. Chapter 243, Local Government Code, is amended
17 by adding Section 243.0031 to read as follows:

18 Sec. 243.0031. AUTHORITY TO REGULATE CERTAIN SEXUALLY
19 ORIENTED PERFORMANCES. (a) In this section, "sexually oriented
20 performance" has the meaning assigned by Section 43.28, Penal Code.

21 (b) Subject to Subsection (c), a municipality or county may
22 regulate sexually oriented performances as the municipality or
23 county considers necessary to promote the public health, safety, or
24 welfare.

25 (c) A municipality or county may not authorize a sexually
26 oriented performance:

27 (1) on public property; or

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1 (2) in the presence of an individual younger than 18
2 years of age.

3 (d) Except as provided by Subsection (c), this section does
4 not limit the authority of a municipality to license, tax,
5 suppress, prevent, or otherwise regulate theatrical or other
6 exhibitions, shows, or amusements under Section 215.032.

7 SECTION 3. Subchapter B, Chapter 43, Penal Code, is amended
8 by adding Section 43.28 to read as follows:

9 Sec. 43.28. CERTAIN SEXUALLY ORIENTED PERFORMANCES
10 PROHIBITED. (a) In this section, "sexually oriented performance"
11 means a visual performance that:

12 (1) features:

13 (A) a performer who is nude, as defined by
14 Section 102.051, Business & Commerce Code; or

15 (B) a male performer exhibiting as a female, or a
16 female performer exhibiting as a male, who uses clothing, makeup,
17 or other similar physical markers and who sings, lip syncs, dances,
18 or otherwise performs before an audience; and

19 (2) appeals to the prurient interest in sex.

20 (b) A person commits an offense if, regardless of whether
21 compensation for the performance is expected or received, the
22 person engages in a sexually oriented performance:

23 (1) on public property; or

24 (2) in the presence of an individual younger than 18
25 years of age.

26 (c) An offense under this section is a Class A misdemeanor.

27 SECTION 4. This Act takes effect September 1, 2023.